FILED AUGUST 13, 2007

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **FELIX TORRES, JR.**, **Member No. 135480**, A Member of the State Bar.	**Case No. 03-O-04964-PEM** **05-O-04167-PEM (Consolidated)** **DECISION & ORDER OF INACTIVE ENROLLMENT**

I. INTRODUCTION

In this consolidated disciplinary proceeding, respondent Felix Torres, Jr. is charged with violating three of the conditions of probation imposed on him in the Supreme Court's August 16, 2000 order in *In the Matter of Torres Jr., Felix, on Discipline*; case number S088290 (State Bar Court case number 96-O-04035) (hereafter *Torres* I) and with engaging in the unauthorized practice of law and acts involving moral turpitude. Deputy Trial Counsel Manuel Jimenez appeared for the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar). Respondent appeared in propria persona.

For the reasons set forth *post*, the court finds respondent culpable of deliberately violating one of the probation conditions imposed on him in *Torres* I and of deliberately engaging in the unauthorized practice of law and acts of moral turpitude. Moreover, the court concludes that the appropriate level of discipline is disbarment. Because the court recommends that respondent be disbarred, it must also order respondent's involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4).[1]

[1]Unless otherwise noted, all further statutory references are to the Business and Professions Code.

II. KEY PROCEDURAL HISTORY

The procedural history in this proceeding is extensive. The State Bar filed the notice of disciplinary charges (hereafter NDC) in case number 05-O-04167-PEM on October 4, 2005, and respondent filed a response to that NDC on October 17, 2005.

The State Bar filed the NDC in case number 03-O-04964-PEM on December 16, 2005, and respondent filed a response to that NDC on January 4, 2006.

The court consolidated case numbers 05-O-04167-PEM and 03-O-04964-PEM for all purposes on February 15, 2006.

On May 17, 2006, the court filed an order imposing sanctions on respondent for, inter alia, failing to appear for his court-ordered deposition. The State Bar sought interlocutory review of that order, and the consolidated proceeding was stayed. Thereafter, the proceeding was pending before the review department on interlocutory review from June 2006 thorough February 2007.

On March 19, 2007, after remand from the review department, this court modified the discovery sanctions it imposed on respondent. Under the modified sanctions, respondent was precluded from testifying and from presenting any documentary evidence at trial, but was otherwise permitted to participate at trial and to cross-examine witnesses.

Trial was held on May 15, 2007, and the proceeding was taken under submission for decision that same day.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The State Bar must establish the charged misconduct by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on August 26, 1988, and has been a member of the State Bar at all times since.

B. Case Number 05-O-04167-PEM (Probation Violations)

In its August 16, 2000 order in *Torres* I, the Supreme Court placed respondent on five years' stayed suspension, five years' probation, and three years' actual suspension that continues

until respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4 (c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.[2] In addition, the Supreme Court ordered respondent to comply with the conditions of probation recommended by the review department in its March 7, 2000 opinion in *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138. Moreover, respondent was given credit towards his three years' actual suspension for the twelve months and seventeen days that he was on involuntary inactive enrollment in *Torres* I.[3] (§ 6007, subd. (c)(4); *In the Matter of Torres, supra,* 4 Cal. State Bar Ct. Rptr. at p. 154.)

The Supreme Court's order in *Torres* I became final on September 15, 2000. (Cal. Rules of Court, former rule 953 [now rule 9.18]). Accordingly, respondent's five-year probation and three-year actual suspension began on September 15, 2000. Even though respondent's probation ended on September 15, 2005, respondent's actual suspension has not ended because respondent has never been able to establish his rehabilitation and present fitness to practice in a standard 1.4(c)(ii) proceeding for relief from actual suspension.[4]

In the NDC in case number 05-O-04167-PEM, the State Bar charges respondent with violating three probation conditions which required that he (1) file quarterly probation reports, (2) cooperate with his assigned probation monitor referee, and (3) participate in a six-month program of mental health treatment. As discussed *post*, the State Bar has established only that respondent violated the condition requiring him to file written probation reports.

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[2]The standards are located in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

[3]Respondent was on involuntary inactive enrollment from February 19, 1999, to March 7, 2000.

[4]To date, respondent has filed five separate standard 1.4(c)(ii) petitions for relief from actual suspension. Respondent's first four petitions were all denied because he failed to establish his rehabilitation and present fitness. Respondent's fifth petition is now pending before this court in case number 07-V-11849-PEM. The parties are hereby notified that the court intends to abate case number 07-V-11849-PEM pending the final disposition of its disbarment recommendation in the present proceeding. (See Rules Proc. of State Bar, rule 116(a).)

1. Probation Reports

Under his probation conditions in *Torres* I, respondent was required to submit written quarterly reports to the State Bar on every January 10, April 10, July 10, and October 10 for five years. In each of those reports, respondent was required to state, under penalty of perjury, whether he had complied with the Rules of Professional Conduct of the State Bar of California, the State Bar Act (§ 6000, et seq.), and the conditions of his probation during the preceding calendar quarter.

On April 4, 2004, respondent sent the State Bar a letter notifying it that his July 10, 2004, probation report would be his last report. (Exhibit 62.) In that letter, respondent asserted that, under the Supreme Court's August 14, 2000 order, he was not required to file probation reports after July 2004. Respondent ended his letter by stating: "IF YOU DISAGREE WITH MY DETERMINATION LET ME KNOW AS SOON AS POSSIBLE SO THAT I MAY SECURE A FEDERAL SOLUTION TO YOUR PROBLEM."[5]

No later than July 2004, respondent's assigned probation monitor and the State Bar began to repeatedly instruct respondent (on the phone and in writing) that, under the Supreme Court order, he was required to submit quarterly probation reports until his five-year probation ended on September 15, 2005. But respondent never obtained a "federal solution." Instead, he repeatedly guffawed at and attacked the State Bar for correctly instructing him to continue submitting probation reports until September 2005. Thereafter, respondent defiantly failed and refused to submit any probation reports after July 2004. In other words, respondent failed and refused to submit his last five probation reports, which were due October 10, 2004; January 10, 2005; April 10, 2005; July 10, 2005; and August 26, 2005.[6]

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[5]In this letter, respondent also incorrectly claimed, inter alia, that, under the Supreme Court's order, he had the option to "either (1) abide by the terms of conditions (including reports) and be suspended for three actual years, or be (2) suspended for five years (without the reports and other probation terms)."

[6]Because respondent's probation terminated before October 10, 2005, his final probation report was due on August 26, 2005 (within 20 days of September 15, 2005).

Even though respondent readily admits that he failed to file his last five probation reports, respondent continues to maintain that he was not required to file probation reports after July 2004. Respondent stated a number of confusing and convoluted reason for his position in his April 4, 2004 letter. In addition, respondent claims that he did not believe that he was on probation after July 2004 because he was given credit towards the five years' probation for the time he was on involuntary inactive enrollment in *Torres* I, which respondent incorrectly claims was 14 months (as noted *ante*, petitioner was on involuntary inactive enrollment for twelve months and seventeen days). Respondent's claims are not credible. Respondent was clearly given credit towards only his three years' actual suspension; he was not given credit towards his five years' probation. (§ 6007, subd. (c)(4); *In the Matter of Torres, supra,* 4 Cal. State Bar Ct. Rptr. at p. 154.)

As the State Bar has repeatedly told him since 2004, respondent's claims are incorrect. They are also unreasonable and meritless. Without question, the Supreme Court's order placed respondent on five years' probation and ordered him to comply with the probation conditions recommended by the review department. No reasonable attorney could conclude otherwise. Clearly, respondent's ill-conceived interpretations of the Supreme Court's order raise public protection concerns. "Respondent's demonstrated tendency towards interpreting important court orders in such a way as to fit his needs may negatively impact his future clients." (*In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 206.)

Attorneys have an independent statutory duty "To comply with all conditions attached to any disciplinary probation. . . ." (§ 6068, subd. (k).) Thus, when an attorney violates a disciplinary probation condition it is grounds for both (1) revoking the attorney's probation and (2) disciplining the attorney. (§ 6093, subd. (b); see also Rules Proc. of State Bar, rule 562.) Therefore, unlike criminal defendants who have a clear right to refuse criminal probation (which is a privilege and an act of grace or clemency) and to receive only a sentence of imprisonment (*In re Osslo* (1958) 51 Cal.2d 371, 377, 381), respondent attorneys in disciplinary proceedings do not have a right to refuse disciplinary probation and to receive only actual suspension as discipline.

In sum, the record clearly establishes that respondent willfully violated section 6068, subdivision (k) by failing to file his last five probation reports.

2. Cooperation

Under his probation conditions in *Torres* I, respondent was required to cooperate fully with his assigned probation monitor referee to enable the referee to discharge the referee's duties. The State Bar failed to establish that respondent violated this condition. Accordingly, the charge that respondent violated this cooperation condition is dismissed with prejudice.

3. Mental Health Treatments

Under his probation conditions in *Torres* I, respondent was required to participate in a program of mental health treatment for six months and to provide satisfactory proof thereof to the State Bar. Respondent was required to begin participating in such a program no later than October 15, 2000 (i.e., not later than 30 days after the effective date of the Supreme Court's order in *Torres* I). Respondent was not required to participate in a mental health program for the entire six-month period if his treating mental health professional determined and certified that he had recovered from his mental and other problems.

Notwithstanding the foregoing facts, the State Bar contends (1) that respondent was required to participate in a mental health treatment program unless and until his mental health professional certified he had recovered and (2) that respondent was never relieved of his obligation to participate in a mental health program and to provide proof thereof to the State Bar with his probation reports. The State Bar then charges that respondent violated his mental health condition because he failed to provide proof, with his last five probation reports (which, as note *ante*, were due on October 10, 2004; January 10, 2005; April 10, 2005; July 10, 2005; and August 26, 2005), that he had participated in a mental health program during the time periods covered by those five reports.

Again, respondent was required to participate in a mental health program for a six-month period beginning no later than October 15, 2000. Thus, under its own terms, respondent's mental health treatment condition terminated on April 15, 2001, at the latest. In other words, respondent had no duty to participate in a mental health program or to provide proof thereof after April 15,

2001. Therefore, respondent did not (and could not have) violated his mental health condition in the manner charged in the NDC.[7] The charge that respondent violated his mental health treatment condition is dismissed with prejudice.

C. Case Number 03-O-04964-PEM (Unauthorized Practice of Law)

1. Facts

a. Federal District Court

After the effective date of his actual suspension under the Supreme Court's order in *Torres* I, respondent filed, in the United States District Court for the Northern District of California (hereafter the federal district court), seven lawsuits in propria persona against a number of institutions (including the California Supreme Court, the State Bar Court, and the State Bar) and individuals for, inter alia, alleged discrimination and civil rights violations. The federal district court eventually dismissed most, if not all, of those seven lawsuits for want of jurisdiction or for failure to state a claim on which relief may be granted.

Between September 18, 2000, and February 2005 (and while he was on actual suspension), respondent identified himself, in 24 different pleadings that he filed in those federal court lawsuits, as either an attorney at law, a member of the State Bar of California, or both.[8] Respondent did so in the "address block" on the first page of each of the 24 pleadings in a form substantially identical to one of the following:

Felix Torres, Jr. SBN 135480
Law Office of Felix Torres, Jr

or

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[7]Moreover, the record at least suggests, if not establishes, that respondent fully complied with his mental health condition. As respondent aptly notes, State Bar Court Judge Joann Remke found in her October 1, 2003 decision in case number 03-V-00469-JMR: (1) that respondent had obtained mental health treatments after his disciplinary case (i.e., the Supreme Court's order in *Torres* I); and (2) that it appeared that respondent had, at that time, complied with all the terms and conditions of probation imposed on him in *Torres* I. Presumably, if respondent had not complied with his mental health condition, the State Bar would have proffered evidence of such in case number 03-V-00469-JMR.

[8]See exhibits 4, 8, 9, 10, 12, 31-41, 47-49, 52- 54, 56, and 57.

Felix Torres, Jr.
Law Office of Felix Torres, Jr.

or

Felix Torres, Jr.
Attorney at Law

On 13 of those 24 pleadings, respondent noted, in a footnote that he placed after his name or his State Bar number, either: "Plaintiff is a member of the State Bar of California, but is on inactive status"; "Inactive Status State Bar of California"; "Inactive Status"; "Inactive Member"; "State Bar of California Not Entitled"; "Not Entitled"; or something substantially identical thereto.[9] However, respondent did not make any such notation on any of the remaining 11 pleadings.

Further, on 5 of those 24 pleadings, respondent typed the title "Attorney at Law" under his signature on the last page without noting that he was on actual suspension.[10] In addition, even though he knew that he was on actual suspension, respondent stated, in the text of 2 of the 24 pleadings, that he "is a disabled Latino attorney licensed to practice law in the State of California . . . ."[11]

Moreover, in October 2004 (while on actual suspension), respondent sent at least two letters to the Assistant United States Attorney assigned to defend against a lawsuit respondent filed against the United States Treasury and others. Both of those letters were written on letterhead with the name "Law Office of Felix Torres, Jr." written at the top and were both signed by respondent with the title "Attorney at Law" typed under his signature.[12] In a footnote following the name of his law office, respondent stated: "California State Bar #135480 Not Entitled."

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[9]Of course, respondent was neither on "inactive status" nor "not entitled"; respondent was (and is) on actual suspension under the Supreme Court's order in *Torres* I. (E.g., *In the Matter of Henschel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 867, 874-875, 881.)

[10]See exhibits 8, 47-49, and 54.

[11]See exhibits 4, 12.

[12]See exhibit 57.

b. Ninth Circuit Court of Appeals

The record clearly establishes that, in March 2003 (while he was on actual suspension), respondent filed a pleading in the Ninth Circuit Court of Appeals in which he identified himself as both an attorney at law *and* a member of the State Bar of California in the address block on the first page using the following form:[13]

> Felix Torres, Jr. SBN 135480
> Law Office of Felix Torres, Jr

On that pleading, respondent placed a footnote after his State Bar number in which he stated "State Bar status Not Entitled."

c. Santa Clara Superior Court

After the effective date of his actual suspension, respondent also filed, in propria persona, two medical malpractice lawsuits against a hospital, a doctor, and others in the Santa Clara Superior Court (hereafter the superior court). Between September 18, 2000, and June 2003 (while on actual suspension), respondent identified himself, in 18 different pleadings that he filed in those two superior court lawsuits, as both an attorney at law *and* a member of the State Bar of California.[14] Respondent did so in the address block on the first page of the pleading using the same formats that he used in his seven federal court lawsuits, *ante*.

On 14 of those 18 pleadings, respondent noted in a footnote after his name or his State Bar number that he was inactive or not entitled using the same type of formats he used in the federal court lawsuits, *ante*. However, respondent did not make any such notation on the remaining 4 pleadings.

Moreover, in one of the superior court lawsuits, the opposing counsel served pleadings on respondent at the "Law Office of Felix Torres, Jr." There is no evidence, however, that respondent ever attempted to correct the opposing counsel's misconception that respondent was then practicing law under the "firm name" of Law Office of Felix Torres, Jr. An attorney simply

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[13]See exhibit 45.

[14]See exhibits 14-19 and 21- 30.

"cannot expressly or impliedly create or leave undisturbed the false impression that he or she has the present or future ability to practice law" when on actual suspension. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91.)

d. Respondent's Conduct was Deliberate

Beginning no later than July 2001, the State Bar has repeatedly advised respondent that it was improper for him to use letterhead stating "Law Office of Felix Torres, Jr." and to discontinue holding himself out as a lawyer until his actual suspension was terminated. But respondent refused to heed the State Bar's instructions, which were clearly correct. In an August 3, 2001 letter that respondent sent to a State Bar attorney who instructed respondent to stop using his letterhead and holding himself out as an attorney, respondent admitted that he had used his letterhead "to correspond with Federal and State cases in which I am a party. . . ." In that same letter, respondent also stated: "For your information, I am at present a member in good standing with the U.S. Federal District Court of the Northern District of California with all the rights and privileges of a practicing attorney. My marching orders do not come from you, sir." Regrettably, as time passed, respondent's response to the State Bar's instructions grew more belligerent and hostile.

Moreover, respondent continued using his letterhead and holding himself out as an attorney even though the State Bar Court has repeatedly found that his doing so was improper. In that regard, in a decision filed on May 18, 2005, in case number 05-V-00734-RAP, State Bar Court Judge Richard Platel found:

> In this matter [case number 05-V-00734-RAP], Petitioner has continued to hold himself out as entitled to practice law. In the caption of the petition in this matter, Petitioner again designated himself as an "attorney at law" albeit with a footnote [representing] his current status as "not entitled." He insists that since he is a member of the State Bar, it is his right to use attorney at law in the [address portion] of a pleading.
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> Petitioner refuses or fails to understand that his actual suspension from the practice of law in California also takes away his entitlement to designate himself as an attorney at law. Such persistent behavior demonstrates his failure to rectify past wrongdoing.

2. Conclusions of Law

The record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (a), to obey the laws of this state by engaging in the unauthorized practice of law in violation of sections 6125 and 6126, subdivision (b).

In this state, it is well established that an attorney on actual suspension engages in the unauthorized practice of law merely by holding himself or herself out as practicing or as entitled to practice law. (§ 6126, subd. (b); *Crawford v. State Bar* (1960) 54 Cal.2d 659, 666.) In fact, even an implied representation (as opposed to an express representation) of the entitlement to practice by a suspended attorney constitutes the unauthorized practice of law. (*In re Cadwell* (1975) 15 Cal.3d 762, 771, fn. 3.)

A suspended attorney engages in the unauthorized practice of law merely by appending the honorific "Esq." to his or her signature or name. Also, a suspended attorney engages in the unauthorized practice of law merely by representing that he or she is a member of the State Bar of California. An attorney represents that he is a member of the State Bar merely by appending his State Bar of California membership number to his signature or name when using the title attorney. In each such instance, the suspended attorney is, at a minimum, impliedly representing that he or she is currently entitled to practice law when the opposite is true. (*In the Matter of Wyrick, supra*, 2 Cal. State Bar Ct. Rptr. at p. 91.) Concomitantly, in each instance, the attorney is also implying that a suspended attorney is legally entitled to practice law when the opposite is true. (E.g., New Hampshire Bar Ass'n Ethics Comm., Opn. 206-07/2, 10/06 [Attorney may not be identified on letterhead as admitted to practice, but on inactive status. To do so implies (and nonlawyers could reasonably believe) that lawyers on inactive status are entitled to practice law].)

Respondent has no credible or plausible defense or explanation for identifying himself as both an attorney *and* a member of the State Bar of California in the pleading he filed in the Ninth Circuit in March 2003 and in the 18 pleadings he filed in the two superior court lawsuits between September 18, 2000, and June 2003. And respondent deliberately engaged in the unauthorized practice of law when he do so.

With respect to his indentifying himself as an attorney, a member of the State Bar of California, or both in the 24 pleadings he filed in the federal district court between September 18, 2000, through February 2005, respondent plausibly asserts that he did not misrepresent his eligibility to practice law in the federal district court because he is a member of that court's bar and because the federal district court has never suspended from practice. (See, e.g., *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 74 [State Bar Act does not regulate the practice of law in federal court].) The State Bar, however, contends that the federal district did in fact suspend respondent from practice or that respondent is otherwise precluded from practicing in the federal district court under the local rules of that court.

The State Bar has failed to establish that the federal district court has suspended respondent. In fact, the State Bar's exhibits strongly suggests the opposite.[15] And the State Bar has not cited to (and the court is unaware of) any local rule to support its contention that respondent is otherwise precluded from practicing in the federal district court so long as he remains on actual suspension under the Supreme Court's order in *Torres* I. (Compare U.S. Dist. Ct., Local Civ. Rules, Central Dist. Cal., rule 83-3.2.)

Accordingly, except with respect to the charges relating to the pleadings in which respondent represented that he was a member of the State Bar of California, the court dismisses with prejudice the charges regarding the pleadings respondent filed in the federal district court. While respondent cannot be discipline for identifying himself as an attorney at law or a member of the bar of the federal district court, the court concludes that he can be disciplined for identifying himself as a member of the State Bar of California in 14 of the pleadings filed in the federal court.[16]

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[15]The record establishes that the federal district issued an order directing respondent to show cause why he should be suspended from its bar on reciprocal discipline. However, there is no evidence suggesting, much less establishing, that the federal district court ever suspended or otherwise disciplined respondent. (See, generally, U.S. Dist. Ct., Local Civ. Rules, Northern Dist. Cal., rule 11-7.)

[16]See exhibits 4, 10, 12, 32, 34, 40, 41, 47, 49, 52-54, 56, and 57.

Moreover, the court finds that respondent's unauthorized practice of law involved moral turpitude in willful violation of section 6101. Respondent's improperly identified himself as an attorney, a member of the State Bar of California, or both in the foregoing pleadings in hopes of gaining a personal advantage, prestige, or favor when dealing with the courts, parties, witnesses, and opposing counsel in the lawsuits in which he filed them.

In addition, respondent's conduct involved moral turpitude because he knew (and was repeatedly told by the State Bar) that his conduct violated the Supreme Court's suspension order and because, if he did not know it, he either acted with indifferent disregard of his duty to comply with the order or was grossly negligent. (*In re Cadwell, supra*, 15 Cal.3d at pp. 771-772.) Actual intent to deceive is not necessary. Creating a false impression through gross negligence involves moral turpitude in violation of section 6106. (*In the Matter of Moriarty* (Review Dept.1999) 4 Cal. State Bar Ct. Rptr. 9, 15.)

Finally, when viewed collectively, respondent's unauthorized practice of law rises to the level of an act involving moral turpitude in willful violation of section 6106. Thus, it is not duplicative to find respondent culpable of violating both section 6068, subdivision (a) and section 6106. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 520; *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 169.)

IV. AGGRAVATING CIRCUMSTANCES

A. Prior Record of Discipline

Respondent has one prior record of discipline, which is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent's prior record of discipline is the Supreme Court's order in *Torres* I and the review department's opinion in that matter (i.e., *In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. 138).

The review department's opinion in *Torres* I "paints" a sordid picture of an attorney who maliciously and gratuitously oppressed, harassed, and intentionally inflicted emotional distress on a female client. Such acts of moral turpitude (§ 6106) are extremely serious. In aggravation, respondent presented dishonest testimony in the State Bar Court; the client suffered usually extensive harm (both monetarily and psychologically); respondent displayed indifference towards

rectification for his misconduct; and respondent failed to appreciate the seriousness of his misconduct. The only mitigation found was respondent's pro bono legal services to the poor and underprivileged.

As the review department aptly concluded in *Torres* I: "It is also important to note the depravity of [respondent's] misconduct in its relation to the legal profession. Here is a lawyer that turns on his client, without provocation, through a pattern of harassment and the intentional infliction of serious emotional distress for the purpose of causing the client grief. Such duplicitous conduct by a lawyer makes the legal profession not a highly essential aid to society, but a detriment." (*In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 151.) Finally, the review department found that respondent:

> suffers from either a mental or other problem requiring medical treatment. First, the fact that respondent made well over one hundred unwarranted late night telephone calls to [the client] alone establishes that respondent suffers from a mental or other problem requiring medical treatment particularly in light of the strange messages respondent left on [the client's] answering machine. Second, even though respondent denies having an alcohol drinking problem, he admits that he made many of the late night telephone calls to [the client] after he returned home from an evening or night of drinking alcohol. In addition, he admits to having two recent drunk driving convictions: one in 1994 and another in 1997.

(*Id.* at p. 154.)

B. Multiple Acts of Misconduct

The fact that respondent has been found culpable of multiple acts of misconduct is also an aggravating circumstance. (Std. 1.2(b)(ii).) Moreover, "When an attorney commits multiple violations of the same probation condition, the gravity of each successive violation increases." (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.) Thus, respondent's successive failures to file his last five probation reports is particularly serious aggravation. This is particularly true in the present case because the State Bar repeatedly reminded respondent of his duty to file probation reports for five full years after the effective date of the Supreme Court's order in *Torres* I.

C. Indifference Towards Rectification of Misconduct

Respondent's failure to rectify his misconduct by belatedly filing his last five probation reports after the State Bar filed the NDC in case number 05-O-04167-PEM establishes his indifference towards rectification, which is another aggravating circumstance. (Std.1.2(b)(v); *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702.) In addition, it suggests that respondent will continue to engage in misconduct in the future. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.)

D. Misconduct Committed While on Probation

Respondent deliberately engaged in the unauthorized practice during his prior five-year probation in *Torres* I. Engaging in misconduct while on disciplinary probation is an aggravating factor. (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 438; see also *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 406.) It suggests that the attorney is either unwilling or unable to conform his conduct to that required of an officer of the court even when he knows that he is under the watchful eye of the State Bar. It also strongly suggests that respondent is either unwilling or unable to engage in the rehabilitative process in any meaningful way and that respondent, therefore, is not an appropriate candidate for further disciplinary probation or suspension.

E. Abusive Conduct

Respondent called one State Bar employee a “fat bitch,” and another a “fucking asshole.” This boorish conduct establishes respondent’s lack of cooperation. (Std. 1.2(b)(vi).) What is more, the conduct is reminiscent of the types of abuse behavior for which respondent was discipline in *Torres* I. (E.g., *In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 145, fn. 9, 151.) Accordingly, the conduct is evidence that respondent’s prior misconduct was not aberrational and that his problems are very deeply rooted. (*In the Matter of Henschel, supra*, 4 Cal. State Bar Ct. Rptr. at p. 879.) This is significant because it is additional evidence that respondent is not an appropriate candidate for probation or suspension.

V. MITIGATING CIRCUMSTANCES

There is no evidence of any mitigating circumstance in the record.

VI. DISCIPLINE DISCUSSION

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In this case, the most severe sanction for respondent's misconduct is found in standard 2.3, which applies to respondent's violations of section 6106 (moral turpitude). Standard 2.3 provides: "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law." However, standard 1.7(a) is also applicable in the present proceeding because respondent has a prior record of discipline. Standard 1.7(a) provides that, when an attorney has one prior record of discipline, the discipline imposed in the current proceeding shall be greater than that imposed in the prior. In light of the extensive discipline imposed on respondent in *Torres* I, standard 1.7(a) supports a conclusion that the appropriate level of discipline in this proceeding is disbarment. (Actual suspensions longer than three years are rare.)

Respondent's misconduct in the present proceeding is particularly troubling. Respondent's deliberate and repeated violations of the probation imposed on him in the Supreme Court's order in *Torres* I is egregious misconduct by itself. As the review department has repeatedly held, "an attorney probationer's filing of quarterly probation reports is an important step towards the attorney's rehabilitation." (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, and cases there cited.)

Moreover, the importance of attorney disciplinary probation is reflected in the substantial discipline that is often imposed for probation violations. (*In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 686.) In addition, because disciplinary probation is fundamental to rehabilitation, an attorney must prove, inter alia, that he or she has strictly complied with all probation conditions in order to establish rehabilitation and fitness to practice in a standard 1.4(c)(ii) proceeding to terminate actual suspension. (See *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 581.)

The Supreme Court's order in *Torres* I provided respondent with an opportunity to reform his conduct to the ethical strictures of the profession. Regrettably, respondent failed to avail himself of that opportunity. At a minimum, his culpability in the present proceeding establishes that respondent is indifferent to his duty to obey Supreme Court disciplinary orders. Respondent's failure to strictly comply with the conditions of probation imposed on him in *Torres* I " 'demonstrates a lapse of character and a disrespect for the legal system that directly relate to [his] fitness to practice law and serve as an officer of the court. [Citation.].' [Citation.]" (*In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 530.) In short, respondent's refusal (or inability) to file his last five probation reports alone raises serious public protection concerns and again strongly suggests that respondent is not seriously engaged in the rehabilitative process.

Moreover, respondent's deliberate and repeated violations of the actual suspension imposed on him in the Supreme Court's order in *Torres* I by holding himself out as entitled to practice law from September 2000 through at least February 2005 is also egregious misconduct. With respect to violating court orders, the Supreme Court has observed that "Other than outright

deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney." (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.)

The record now before the court demonstrates that the risk of future misconduct is great and that respondent is not a good candidate for further probation or suspension. As noted *ante*, before respondent may resume practicing law, he is required to make a showing based on a preponderance of the evidence of rehabilitation, fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii). However, in light of the factors noted *ante* and the complete lack of mitigation in this proceeding, the court concludes that respondent should be required to present his evidence of rehabilitation and present fitness to practice law in a reinstatement proceeding with its attendant greater showing than that required under standard 1.4(c)(ii). Accordingly, the court will recommend that respondent be disbarred.

Finally, in light of the fact that respondent has continually been on actual suspension since September 15, 2000, under the Supreme Court's order in *Torres* I and was ordered to comply with former rule 955 of the California Rules of Court in that order, the court does not recommend that respondent be ordered to comply with rule 9.20 of the California Rules of Court in this proceeding.

VII. DISCIPLINE RECOMMENDATION

This court recommends that respondent be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

VIII. COSTS

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

IX. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of

California effective upon the earlier of personal service or three days after service by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: August 13, 2007.

PAT McELROY
Judge of the State Bar Court